

IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

BLUE SPIKE, LLC,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Case No. 6:15-cv-584
	§	
AUDIBLE MAGIC CORPORATION	§	
<i>Defendant.</i>	§	

AUDIBLE MAGIC CORPORATION	§
<i>Counterclaim Plaintiff,</i>	§
	§
v.	§
	§
BLUE SPIKE LLC, BLUE SPIKE, INC.	§
and SCOTT A. MOSKOWITZ	§
<i>Counterclaim Defendants.</i>	§

SEVERANCE ORDER

The above-entitled and numbered cause of action was referred to the undersigned United States Magistrate Judge for pre-trial purposes in accordance with 28 U.S.C. § 636.

On April 18, 2016, the Electronic Frontier Foundation (“EFF”) was allowed to intervene in this case for the limited purpose of moving to unseal specific docket entries and their associated exhibits. On May 17, the Court granted EFF’s motion to unseal. EFF now seeks sanctions against Blue Spike, LLC and its counsel for having to file the motion to intervene and unseal.

In the meantime, the original parties in this case have settled the litigation and submitted an agreed stipulation of dismissal of the claims, counterclaims, and causes of action between them on July 1. The following day, EFF filed a Notice Regarding Continued Pendency of Motion for Sanctions (Docket Entry # 141), advising the Court it is not a party to the settlement.

The Court is aware EFF's motion for sanctions is still pending and exercises its discretion in severing that issue into a new miscellaneous cause number. *See FED. R. CIV. P. 21; see also Rice v. Sunrise Express, Inc.*, 209 F.3d 1008, 1016 (7th Cir. 2000)(noting it is within the district court's discretion to sever a claim so long as that claim is "discrete and separate"). This will allow the above cause number to be closed without prejudicing EFF. Accordingly, it is

ORDERED that the Clerk of the Court shall sever the Opposed Motion of Intervenor Electronic Frontier Foundation for Sanctions Pursuant to 28 U.S.C. § 1927 and the Court's Inherent Authority (Docket Entry # 136) into a new miscellaneous cause number styled *Electronic Frontier Foundation v. Blue Spike, LLC*. It is further

ORDERED that the filing fee is waived for the new cause number. The Clerk of the Court shall docket in the newly-created cause number this Order as well as the Opposed Motion of Intervenor Electronic Frontier Foundation for Sanctions Pursuant to 28 U.S.C. § 1927 and the Court's Inherent Authority (Docket Entry # 136).¹ It is further

ORDERED that Blue Spike, LLC and Garteiser Honea, P.C. shall file their response(s) to EFF's motion for sanctions on or before July 25, 2016. Any reply shall be filed on or before August 5, and any surreply shall be filed on or before August 12.

IT IS SO ORDERED.

SIGNED this 5th day of July, 2016.



CAROLINE M. CRAVEN
UNITED STATES MAGISTRATE JUDGE

¹ To the extent the parties would like any other docket entries from 6:15cv584 to be docketed in the newly-created cause number, the parties shall file an appropriate motion.